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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MAURICE HOWARD,

Defendant and Appellant.

D076800

(Super. Ct. No. SCD278714)

APPEAL from a judgment of the Superior Court of San Diego County, Michael S. Groch, Judge. Affirmed.

Maurice Howard, in pro. per.; and Kristen Owen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Maurice Howard of assault with force likely to produce great bodily injury (Pen. Code,<sup>1</sup> § 245, subd. (a)(4); count 1); and false imprisonment by violence, menace, fraud, and deceit (§§ 236 and 237;

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

count 2). Howard admitted two prison priors (§ 667.5, subd. (b)) and three strike priors (§ 667, subds. (b)-(i)).

At sentencing, the trial court struck the prison priors and struck two of the strike priors. The court imposed the upper term for count 1, doubled for the strike prior for a term of eight years. The sentence on count 2 was stayed under section 654.

Howard filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), indicating she has not been able to identify any arguable issues for reversal on appeal. Counsel asks the court to review the record for error as mandated by *Wende*. We offered Howard the opportunity to file his own brief on appeal. After multiple extensions of time, he has responded. We will address Howard's contentions later in this opinion.

#### STATEMENT OF FACTS

We have reviewed the record. The probation report contains an accurate synopsis of the facts of this case. We will adopt the officer's synopsis to provide background for our review.

"On [September 22, 2018], victim Liana E., who admitted during the jury trial that she had been drinking and smoking marijuana about an hour before, was walking southbound on Euclid Ave and had just passed the train tracks. She noticed a male, later identified as the defendant, following her. When the victim turned around, she heard the defendant mumble, 'You had something to do with it. You had something to do with it.' The defendant eventually got in front of the victim and would not let her pass. The victim attempted to back up and go the opposite way; however, the defendant would not let her pass (**as to Count 2**). After approximately a couple of minutes, the defendant told her that he would get behind her. After the defendant got

behind the victim, he put his right [forearm] around the victim's neck and began strangling her (**as to Count 1**). She reportedly testified during the preliminary hearing that the defendant's hold on her neck was so tight she could feel his muscles. She further testified that she could feel the hold on her neck get tighter and tighter. She had difficulty breathing and urinated on herself during the attack.

"The victim and the defendant eventually fell backwards. At that time, the victim kicked the defendant in his genitals and escaped. She reported the incident to security at a nearby grocery store and police were summoned.

"Although the victim complained of soreness to her neck, she refused medical treatment.

"Based on the victim's description of the defendant, he was located in the dirt walking trail which runs alongside the trolley tracks. The defendant was subsequently detained and escorted back to the street where patrol vehicles were parked. During curbside lineup, the victim positively identified the defendant as the man who assaulted her. He was subsequently placed under arrest and transported to police headquarters.

"During a post-Miranda statement, the defendant [said] he was drinking beer with an older man by the trolley tracks. Before police mentioned that the victim was male or female, the defendant denied speaking or touching 'her.'"

## DISCUSSION

As we have noted, appellate counsel has filed a *Wende* brief and asks the court to review the record for error as required by *Wende*. To assist the court in its review of the record, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified the following possible issues that she considered in evaluating the potential merits of this appeal:

1. Was the police show up unduly suggestive;
2. Whether the court's instruction on flight, when there was no evidence of flight was prejudicial;
3. Whether there was prejudicial prosecution misconduct in closing arguments when the prosecutor commented on the defendant's failure to call certain witnesses. (The court sustained the defense objection and struck the comments); and
4. Did the court prejudicially err in modifying certain jury instructions over defense objection.

We have reviewed Howard's supplemental brief to determine if it raises an arguable issue for reversal on appeal. Basically, Howard contends the principal witness was biased and not truthful. Howard discusses some matters from the transcript and then offers his analysis of why the testimony was not true. The material he has submitted does not raise an arguable issue for reversal on appeal. The appellate court does not make credibility assessments and does not reweigh the evidence, thus his renewed attack on witness credibility does not present arguable appellate issues.

We have reviewed the entire record as mandated by *Wende* and *Anders*. We have not identified any arguable issues for reversal on appeal in our review, nor have we found any arguable issues in the material submitted by Howard. Competent counsel has represented Howard on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.